

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1141 of 2007

Prabu

.. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.
2. The District Collector
and District Magistrate
Villupuram District
Villupuram.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue Habeas Corpus as stated therein.

For Petitioner : Mr.Vajiravelu

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

सत्यमेव जयते

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the detenu himself has preferred this Habeas Corpus Petition seeking a writ of habeas corpus to call for the entire records leading to the detention of petitioner under Order No.C2/9105/2007, dated 1.3.2007 on the file of the second respondent herein, to quash the same as illegal and to consequently direct the respondents to produce the body and person of the petitioner before this Court and to set him at liberty.

3.1. The order of detention dated 1.3.2007 was passed on the basis of ground case in Crime No.57 of 2007 for alleged commission of offences under Sections 392 read with 397 of the Indian Penal Code. The allegation against the detenu was that on 12.2.2007 at about 7.00 p.m., when the Taxi Driver, Ramesh was driving his car bearing registration No.TN-67-8242 from Kachirapalayam to Thiyyagadurgam, near sugar factory at Kallakurichi Road, the detenu and his associates waylaid the car, brandished knives at Ramesh, pulled him out of the car and one of the associates of detenu put a knife on the neck of Ramesh and demanded as to what he had in his pocket. The detenu threatened to kill him and snatched Nokia mobile from his shirt pocket and another associate snatched Rs.1200/- from his pant pocket. The said Ramesh started shouting and on hearing the same the nearby people came to spot. At that time, one of the associates of the detenu instructed others to kill if anybody came near to catch him. All of them brandished knives saying that the entire people of Salem District are afraid of them and that if anybody dared to come and catch them, they would kill them. The shop keepers downed the shutters out of fear. The vehicular traffic came to a standstill. The detenu and his associates escaped. On the complaint of the said Ramesh, the crime was registered at Kachirapalayam Police Station. The Inspector of Police, Kachirapalayam arrested the detenu on 12.2.2007 itself.

3.2. That apart, the detaining authority also took note of the adverse case pending against the detenu in Crime No.78 of 2007 on the file of Chinnasalem Police Station for the offence punishable under Section 392 of the Indian Penal Code.

3.3. Considering these activities of the detenu are prejudicial to maintenance of public order, the detaining authority passed the impugned order. The detenu was declared as an "Goonda" and was kept in custody at Central Prison, Cuddalore.

4. The learned counsel for the petitioner inviting our attention to the contradictions in paragraph (5) of the grounds of detention dated 1.3.2007, wherein it is stated that the detenu is in remand in Central Prison, Cuddalore in Kanchirapalayam Police Station Crime No.57 of 2007, and the proceedings of the Judicial Magistrate, Kallakurichi at Page 89 of the booklet filed in this habeas corpus petition, wherein it is stated that the accused was not produced on 27.2.2007 and the matter is adjourned to 13.3.2007 for his production, contends that the remand of the detenu was not valid and therefore, the order of detention is vitiated.

5. We have perused the entire materials placed before us and heard the submissions of both sides.

6. As pointed out by the learned counsel for the petitioner, in paragraph (5) of the grounds of detention dated 1.3.2007, it is stated as under:

" ... Thiru Prabu, son of Rangesan is in remand in Central Prison, Cuddalore in Kanchirapalayam Police Station Cr.No.57/2006 and he has not filed any bail application till date."

whereas, at Page 89 of the booklet, in the proceedings dated 27.2.2007 before the learned Judicial Magistrate, Kallakurichi it is recorded that the accused was not produced and the matter may be posted on 13.3.2007 for his production. The above facts raise a serious doubt as to whether the detenu was in valid remand or not on the date of passing of the detention order. This aspect of the case was not properly considered by the detaining authority and the same vitiates the order of detention.

For the reasons aforesaid, the impugned order of detention suffers for non-application of mind and as such, the same is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 1.3.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

sasi

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Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Secretary to Government
Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.

2.The District Collector
and District Magistrate
Villupuram District
Villupuram.

3.The Superintendent,
Central Prison, Cuddalore.

4.The Joint Secretary to Government,
Public (Law & Order),
Fort Saint George, Chennai-9.

5.The Public Prosecutor
High Court, Madras.

+1 cc to Mr.P.Vajravelu, Advocate Sr.No.67247.

VC(CO)
dcp/20.11

H.C.P.No.1141 of 2007



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